

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS BALLY,

Plaintiff,

v.

Case Number  
Honorable

FIRST NATIONAL BANK OMAHA,

Defendant.

---

Nemer N. Hadous (CA #264431)  
Robert A. Hadous (P-32365)  
HADOUS|CO. PLLC  
24725 W. 12 Mile Rd., Ste. 110  
Southfield, Michigan 48034  
(248) 663-5155  
nhadous@hadousco.com  
Attorneys for Plaintiff Thomas Bally

**COMPLAINT**

NOW COMES Plaintiff Thomas Bally, ("Plaintiff"), by counsel, for his  
Complaint against Defendant First National Bank Omaha ("Defendant") alleging  
violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227.

**JURISDICTION AND VENUE**

1. This Court has federal question jurisdiction because this action arises  
out of violations of federal law. 28 U.S.C. §§ 1331. Jurisdiction is also proper



1           8.     During all time pertinent to this Complaint, Defendant acted through  
2 authorized agents, employees, officers, members, directors, heirs, successors,  
3 assigns, principals, trustees, sureties, subrogees, representatives, and/or insurers.  
4

5           9.     Any violations by Defendants as set forth in this Complaint were  
6 knowing, willful, and intentional, and Defendant did not maintain procedures  
7 reasonably adapted to avoid any such violation.  
8

9           **TELEPHONE CONSUMER PROTECTION ACT (47 U.S.C. § 227)**  
10

11           10.    Plaintiff incorporates herein by reference all of the above paragraphs  
12 of this Complaint as though fully set forth at length herein.  
13

14           11.    Congress enacted the TCPA in response to a growing number of  
15 consumer complaints regarding certain telemarketing practices.  
16

17           12.    The TCPA regulates, *inter alia*, use of automated telephone  
18 equipment, or "autodialers." Specifically, the plain language of § 227(b)(1)(A)(iii)  
19 prohibits use of autodialers to make any call to a wireless number in the absence  
20 of an emergency or prior express consent of the called party.  
21

22           13.    According to findings by the Federal Communication Commission  
23 ("FCC"), the agency Congress vested with authority to issue regulations  
24 implementing the TCPA, such calls are prohibited because, as Congress found,  
25 automated or pre-recorded telephone calls are a greater nuisance and invasion of  
26 privacy than live solicitation calls, and such calls can be inconvenient.  
27  
28

1           14. On January 4, 2008, the FCC released a Declaratory Ruling wherein  
2 it confirmed that autodialed and prerecorded message calls to a wireless number  
3 by a creditor (or on behalf of a creditor) are permitted only if the calls are made  
4 with the "prior express consent" of the called party. The FCC "emphasize[d] that  
5 prior express consent is deemed to be granted only if the wireless number was  
6 provided by the consumer to the creditor, and that such number was provided  
7 during the transaction that resulted in the debt owed."  
8

9  
10           15. The TCPA prohibits the use of any "automatic telephone dialing  
11 systems" to call cellular telephones. It also prohibits the use of artificial or  
12 prerecorded messages.  
13

14  
15           16. An "automatic telephone dialing system" means any equipment that  
16 has the "capacity to dial numbers without human intervention." *Griffith v.*  
17 *Consumer Portfolio Serv., Inc.*, 2011 WL 3609012 (N.D. Ill. Aug. 16, 2011).  
18

19                           **FACTUAL ALLEGATIONS**  
20

21           17. In December 2016, Defendant began flooding Plaintiff's mobile  
22 telephone ending in 0578 with daily collection calls.  
23

24           18. Defendant calls Plaintiff's cellular telephone at an annoying and  
25 harassing rate on a near daily basis.  
26

27           19. Defendant telephones Plaintiff roughly 2-3 times per day, every day,  
28 with some calls occurring as early as 8:11 a.m. and as late as 8:40 p.m..

1           20.   Some of these calls are simply hung up, with no apparent person or  
2 representative on the other end of the line when Plaintiff answers. During others,  
3 Plaintiff hears silence and then clicking as the automated call is transferred to a  
4 live human being who begins to speak after a brief silence.  
5

6           21.   Defendant calls Plaintiff from the telephone numbers (800) 537-  
7 3302. This number is affiliated with, owned and operated by Defendant.  
8

9           22.   On December 6, 2016, Defendant telephoned Plaintiff's mobile  
10 phone at approximately 12:28 p.m. Plaintiff advised Defendant he did not wish to  
11 be contacted, and asked for these calls to stop—thereby revoking consent to be  
12 contacted. Rather than cease these calls, Defendant increased their frequency.  
13  
14

15           23.   Over the next month, Defendant called Plaintiff over 100 times.  
16

17           24.   Rather than cease these calls, Defendant continued to call Plaintiff  
18 multiple times per day. Defendant has called Plaintiff over 100 times since  
19 Plaintiff originally revoked consent to be called.  
20

21           25.   Despite these revocations, Defendant continues to harass Plaintiff on  
22 a near daily basis by repeatedly calling his mobile phone.  
23

24           26.   The telephone number Defendant contacts Plaintiffs at with its  
25 "automatic telephone dialing system," is assigned to cellular telephone services as  
26 specified in 47U.S.C. § 227(b)(1)(A)(iii).  
27  
28

1           27. Defendant uses an “automatic telephone dialing system”, as defined  
2 by 47 U.S.C. § 227(a)(1), to place these repeated calls to Plaintiff.

3           28. Defendant’s calls constitute calls that are not for emergency  
4 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

5           29. Defendant frequently uses skip-tracing services to locate telephone  
6 numbers used by consumers whom Defendant wishes to call.

7           30. Defendant’s calls are placed to a telephone number assigned to a  
8 cellular telephone service pursuant to 47 U.S.C. § 227(b)(1)(A)(iii).

9           31. Under the TCPA and pursuant to the FCCs January 2008  
10 Declaratory Ruling, the burden is on the Defendant to demonstrate that the  
11 Plaintiff provided express consent within the meaning of the statute because it is  
12 the best entity to determine how numbers were attained.

13           32. Even if Defendant received Plaintiff’s “prior express consent” to  
14 receive calls using an automatic telephone dialing system or an artificial or  
15 prerecorded voice, “prior express consent” was revoked, when Plaintiff told  
16 Defendant to stop calling him on three separate occasions.

17           33. The natural consequence of Defendant’s statements and actions is to  
18 produce an unpleasant and hostile situation between Defendant and Plaintiff.

19           34. The natural consequence of Defendant’s statements and actions was  
20 to cause Plaintiff mental distress.  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT ONE**

**VIOLATION OF TELEPHONE CONSUMER PROTECTION ACT**

**47 U.S.C. § 227**

Defendant FNB Omaha

35. Plaintiff incorporates herein by reference all of the above paragraphs of this Complaint as though fully set forth at length herein.

36. The TCPA is intended to prevent calls and text messages like the ones described herein, and to protect the privacy of citizens like Plaintiffs. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

37. In enacting the TCPA, Congress found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Mims* 132 S. Ct. at 744.

38. Section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party. The TCPA prohibits the use of any "automatic telephone dialing systems" to call cellular telephones. It also prohibits the use of artificial or prerecorded messages. An "automatic telephone dialing system" means any equipment that has the "capacity to dial numbers without human

1 intervention." *Griffith v. Consumer Portfolio Serv., Inc.*, 2011 WL 3609012 (N.D.  
2 Ill. Aug. 16, 2011).

3  
4 39. Defendant made unsolicited commercial phone calls to the wireless  
5 telephone number of Plaintiff, using equipment that had the capacity to store or  
6 produce telephone numbers to be called, using a random or sequential number  
7 generator, as evidenced by the pre-recorded nature of the calls.  
8

9 40. On December 06, 2016, Plaintiff instructed Defendant not to call  
10 him anymore, thereby revoking consent to be contacted by Defendant.  
11

12 41. Rather than cease its collection calls, Defendant has called Plaintiff  
13 over 100 times over a roughly two-month span.  
14

15 42. Defendant's collection telephone calls to Plaintiff are without  
16 Plaintiff's prior express consent.  
17

18 43. Defendant's conduct therefore violates the TCPA by Placing non-  
19 emergency telephone calls to Plaintiff's cellular telephone using an automatic  
20 telephone dialing system and/or pre-recorded or artificial voice in violation of 47  
21 U.S.C. § 227 (b)(1)(A)(iii).  
22

23  
24 **PRAYER FOR RELIEF**

25 44. **WHEREFORE**, Plaintiff, respectfully requests judgment against  
26 Defendant, for the following:  
27  
28



- 1 (a) For Defendant's negligent violations of 47 U.S.C. 227(b)(1),  
2 Plaintiff is entitled to and requests \$500.00 in statutory damages, for  
3 each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).  
4
- 5 (b) For Defendant's willful and/or knowing violations of 47 U.S.C.  
6 227(b)(1), Plaintiff is entitled to and requests treble damages, as  
7 provided by statute, up to \$1,500.00, for each and every violation,  
8 pursuant to 47 U.S.C. 227(b)(3)(B) and 47 U.S.C. 227(b)(3)(C).  
9
- 10 (c) Plaintiff is entitled to and seeks injunctive relief prohibiting such  
11 conduct in the future as well as any other relief that this Honorable  
12 Court deem just and proper, including post-judgment interest.  
13  
14

15 **JURY DEMAND**

16 Plaintiff hereby demands jury trial on all issues so triable.  
17

18 **RESPECTFULLY SUBMITTED** this 28th day of February 2017,  
19

20 **HADOUS|CO. PLLC**

21 /s/Nemer N. Hadous

22 Nemer N. Hadous (CA: 264431)  
23 Robert A. Hadous (P-32365)  
24 24725 W. 12 Mile Rd., Ste. 110  
25 Southfield, Michigan 48034  
26 Phone: (248) 663-5155  
27 Email: nhadous@hadousco.com  
28 Attorneys for Thomas Bally